

How to File Your Own Appeal:

A FILING GUIDE

FOR PRO SE LITIGANTS

IN THE APPELLATE

COURTS OF TENNESSEE

**Appellate Court Clerk's Office
Supreme Court Building
401 7th Avenue North
Nashville, TN 37219**

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Introduction

When you are not represented by a lawyer and you lose your case at trial, what must you do to appeal the trial court's decision to a higher court? The Office of Appellate Court Clerk is pleased to provide you with this filing guide to assist you in your appeal. This guide is intended to explain the basic requirements for persons who want to appeal their cases to the Tennessee Court of Appeals or Tennessee Court of Criminal Appeals. It also describes how to seek permission to appeal to the Tennessee Supreme Court.

The appellate courts in Tennessee have offices located in Nashville, Knoxville and Jackson. The staff in all three offices are there to serve everyone, regardless of whether you are represented by an attorney or if you represent yourself. The staff members are happy to provide you with the following:

- (1) the status of a case (what last happened);
- (2) general information on court rules, procedures and practices; and
- (3) certain forms and sample pleadings such as a Notice of Appeal form.

However, please be aware that staff members are **NOT** permitted to do any of the following:

- (1) provide legal advice;
- (2) estimate when an opinion will be filed;
- (3) reveal which judge to whom a case has been assigned to write the court's opinion;
- (4) provide advice as to whether you should or should not file an appeal or file motions; or

(5) fill out any form or tell you what to say in the form.

Included in this guide are the following sections: (1) Frequently Asked Questions; (2) Time-line for an Appeal and Brief Color Chart; (3) Forms and Sample Pleadings; and (4) Glossary of Legal Terms used in this guide. This filing guide outlines the process for filing a basic, ordinary appeal following a trial court's final judgment in a case. This guide does not explain how to file special types of appeal from a non-final order of trial court. Finally, this filing guide should not be relied on as a substitute for the full text of the Tennessee Rules of Appellate Procedure which may be found at the Administrative Office of the Courts web site under court rules: <http://www.tsc.state.tn.us/opinions/tsc/rules/TNrulesofcourt/appellateproindex.htm>

I hope that this guide will be of help to pro se litigants who wish to pursue an appeal in the appellate courts of this State. I invite you to visit the web site of the Appellate Court Clerk's Office located at: <http://www.tsc.state.tn.us/geninfo/AppellClerk/AppellateClerksWeb.htm>. You will find all of the forms discussed and shown in this filing guide as well as other very valuable information such as the oral argument calendars for all the appellate courts.

Michael Catalano
Clerk of the Appellate Courts

Frequently Asked Questions

1. **What is a notice of appeal?**

A notice of appeal is a short written statement that tells the trial court and opponents that you are dissatisfied with the final judgment of the trial court and you intend to file an appeal.

2. **What information must be included in a notice of appeal?**

- _____ ● The names of the person/s appealing;
- The date of the judgment being appealed;
- The trial court that entered the judgment (for example: Sumner County Circuit Court/ Sumner County Chancery Court);
- The name of the appellate court to which you are appealing (for example: Court of Appeals, Court of Criminal Appeals, Tennessee Supreme Court); and a certificate of service.

Please refer to the Notice of Appeal form which appears as **Attachment 1** to this Filing Guide. If you follow and complete this form, your notice of appeal will include all the information necessary to enable the Appellate Court Clerk's Office to initially process your appeal.

3. **What is a certificate of service?**

A certificate of service is a statement by the person filing the notice of appeal that a copy of the notice of appeal has been served upon all opposing parties, or if an opposing party is represented by an attorney, upon the attorney for the opposing party. All pleadings filed in the trial and appellate courts must include a certificate of service.

4. **What must a certificate of service contain?**

The certificate of service must contain the following:

- a list of the name and address of the parties, or the attorneys, upon whom the notice of appeal has been served,
- the date the notice of appeal was served,
- the manner by which it was served (for example, U.S. mail), and
- the signature of the person serving the pleading.

A sample certificate appears as **Attachment 3I**.

4. **Where do I file a notice of appeal?**

A notice of appeal must be filed with the **clerk of the trial court** whose judgment you are appealing. For example, if you are appealing the judgment of the Sumner County Chancery Court. You would file your notice of appeal with that Clerk's office.

5. **When do I file a notice of appeal?**

A notice of appeal must be filed **within 30 days of the entry of the judgment you are appealing**. If you are appealing a judgment in a civil case and the notice of appeal is filed after the 30-day period, the Court of Appeals will dismiss the case without deciding the legal issues. If you are appealing a judgment in a criminal case and the notice of appeal is filed after the 30-day period, the Court of Criminal Appeals may dismiss the appeal without deciding the legal issues. It is very important to file the notice of appeal within 30 days of entry of judgment. **NOTE:** If the 30th day is a weekend or a state holiday, the notice of appeal will be considered timely filed if you file it on the first business day after the weekend or the state holiday.

6. **When I file a notice of appeal, do I have to file any other document?**

Unless you have been allowed to proceed in the trial court as a poor person or indigent, you must also file an appeal bond for costs on appeal. This bond must be filed along with the notice of appeal.

7. **What is an appeal bond for costs?**

An appeal bond for costs ensures that the costs of the appeal will be paid by the party appealing should the party appealing lose on appeal. An appeal bond for costs must be signed by a surety, who must be (1) a person other than the party appealing; (2) a person who does not reside with the party appealing; (3) a person who is a resident of the State; and (4) a person who has sufficient funds in Tennessee to pay the appeal costs. A Tennessee bonding company may also act as surety. If the party appealing fails to pay the costs, then the surety must pay the costs. Costs of appeal include the statutory costs incurred by the trial court clerk in preparing the record to send to the appellate court and the statutory costs incurred by the appellate court clerk in processing the appeal. The Appellate Court Clerk's Office uses a form Appeal Bond for Costs, and this form appears as **Attachment 2** to this Guide.

8. **What if I cannot find someone who will sign as a surety?**

_____ Instead of an appeal bond for costs, you may file a cash bond in the amount of \$1,000.00. The cash bond is payable with a certified check or money order directly to the trial court clerk. You must still fill out the notice of appeal form, but, the clerk of the trial clerk of the trial court must approve the appeal bond for costs and sign the bottom of the notice of appeal form.

9. **What if I cannot afford an appeal bond or litigation tax?**

You may not be required to pay the appeal bond, but you must pay the litigation tax. In order to qualify for relief from filing the appeal bond, the trial court judge must make a determination and enter an order finding that you are indigent and entitled to proceed "in forma pauperis." Please refer to Tennessee Supreme Court Rule 29 for the affidavit of indigency for civil cases. Persons who are initially relieved from the appeal bond still will be responsible for paying court costs, if ordered to do so by the appellate court. All appealing parties, even those proceeding in forma pauperis, must pay the state litigation tax which is currently \$13.75. You will receive from the Appellate Court Clerk's Office an invoice with instructions on paying the litigation tax. If you are an inmate, the law requires you to pay the tax or to pay 20% of the tax and include a statement of your inmate trust account for the past six months.

10. **What is the record on appeal, and what does it contain?**

The record on appeal contains the pleadings filed in the trial court, the transcript of the trial, and any exhibits introduced during the trial. The appellate court considers the record and legal briefs filed by the parties to determine whether the trial court made an error or mistake entitling you as the appellant to any relief. Specifically, the record must contain the following:

- (1) copies, certified by the clerk of the trial court, of all papers filed in the trial court except as hereafter provided;
- (2) the original of any exhibits filed in the trial court;
- (3) the transcript or statement of the evidence or proceedings, which shall clearly indicate and identify any exhibits offered in evidence and whether received or rejected;
- (4) any requests for instructions submitted to the trial judge for consideration, whether expressly acted upon or not; and
- (5) any other matter designated by a party and properly included in the record.

11. **Is anything excluded from being filed in the record?**

Yes, unless a party designates by filing a notice of designation within 15 days of the filing of the notice of appeal, the following papers filed in the trial court are excluded from the record: (1) subpoenas or summonses for any witness or for any defendant when there is an appearance for such defendant; (2) all papers relating to discovery, including depositions, interrogatories and answers thereto, reports of physical or mental examinations, requests to admit, and all notices, motions or orders relating thereto; (3) any list from which jurors are selected; (4) trial briefs; and (5) minutes of opening and closing of court.

12. **Once I have filed the notice of appeal, what do I do next?**

If there was a trial of your case and a court reporter was present taking down all of the testimony, you should contact the court reporter to make arrangements to file a copy of the transcript with the trial court clerk. If there was not a trial in your case and it was decided upon motions, then you should file a notice with the trial court clerk that no transcript will be filed.

13. **If the trial court ruled against me without a trial, when must I file a notice of no transcript?**

A notice that “No transcript” must be filed with the trial court clerk within 15 days of the filing of the notice of appeal.

14. **If the trial court ruled against me and there was a trial, when must the transcript be filed?**

The transcript must be filed with the trial court clerk within 60 days of the filing of the notice of appeal.

15. **What do I do if I need an extension of time for the court reporter to file the transcript?**

As the party appealing the case, you must file a motion for extension of time for filing the transcript with the Clerk of the Appellate Courts addressed to the Court of Appeals or Court of Criminal Appeals depending upon the court to which you appealed. The motion should be accompanied with an affidavit from the court reporter explaining the reasons for the needed extension of time for filing the transcript.

16. **Who prepares and files the record on appeal?**

The trial court clerk prepares and files the record on appeal with the Appellate Court Clerk’s Office within 45 days of the filing of the transcript or notice of no transcript.

17. **When I receive a notice from the Appellate Court Clerk’s Office of the filing of the record, what must you do?**

Once the record is filed with the Appellate Court Clerk's Office, you will receive a notice in the mail from the Appellate Court Clerk stating that the record was filed on the specified date. You should then begin preparing to file your brief with the Appellate Court Clerk's Office. You are permitted to look at the record at the Appellate Court Clerk's Office in preparing your brief, and you may file a motion seeking permission from the appellate court to check out the record.

18. **What must an appellant's brief contain?**

The brief must contain the following sections:

(1) **A table of contents** - A list showing on which page the information can be found. (The table of contents should list each of the following: Table of Authorities; Statement of the Issue Presented for Review; Statement of the Case; Statement of the Facts; Summary of Argument; Argument; Conclusion and Certificate of Service), Descriptions of each of these sections are as follows: **See attachment 3B**

(A) **A table of authorities** - The legal authorities used to back up your argument in your brief (alphabetically arranged), these include cases, statutes and other authorities cited, with references to the pages in the brief where they are cited; **See attachment 3C**

(B) **A statement of the issues presented for review** - List all the issues (any fact, question or matter that was directly involved in deciding the outcome from the lower court proceedings that you want the Appellate Court to review; **See attachment 3D**

(C) **A statement of the case** - Statement indicating briefly the nature of the case, the way the case proceeded, and the end result in the court below; **See attachment 3E**

(D) **A statement of facts** - setting forth the facts (what actually took place) relevant to the issues presented for review with appropriate references to the record. For every statement of fact, you must cite the page in the record from which that fact was entered into evidence in the case. You cannot state facts that are outside of the record. All facts must be found somewhere in the record; **See Attachment 3F**

(E) **An argument** - Those legal reasons why you believe the trial court or jury made an error in your case which entitles you to either a reversal or to have the appellate court send the case back for a new trial. You should refer to the relevant statutes and cases in support of your position along with the facts in the record which support your position. **See Attachment 3G**

(F) **A short conclusion**, stating the precise relief sought.

Explanation: The conclusion sets forth the specific assistance you are asking of the appellate court such as reversal, remand for a new trial, etc. **See Attachment 3H**

Samples of each of these sections are attached to these guidelines as **Attachment 3**.

19. **Is there a limit on the number of pages in an appellant's brief?**

Yes. The argument section in a principal brief by the appellant and appellee cannot exceed 50 pages, and the argument section in reply brief by the appellant cannot exceed 25 pages.

20. **How long do you have to file an appellant's brief?**

You must file an appellant's brief with the Appellate Court Clerk's Office within 30 days after the filing of the record on appeal. It is important to note that the 30 days is counted from the date of the filing of the record, not from the date that you receive notice from the Appellate Court Clerk's Office that the record was filed. In the Court of Appeals, you must file the original and 4 copies of the appellant's brief with the Appellate Court Clerk's Office. In the Court of Criminal Appeals, you must file an original and 3 copies of the appellant's brief with the Appellate Court Clerk's Office. In addition, the appellant's initial brief must have a blue cover.

21. **What do you do if you need an extension of time for filing your brief?**

If you have a good reason for an extension of time for filing a brief, you must file a motion for extension with the Appellate Court Clerk's Office before the deadline for filing your brief. Extensions are rarely granted in cases involving parental termination. A sample motion for extension is attached to these guidelines and marked as **Attachment 4**.

22. **How long does an appellee have to file his or her brief?**

An appellee must file a brief with the Appellate Court Clerk's Office within 30 days of the filing of the Appellant's brief. It is important to note that the 30 days is counted from the date that the appellant's brief is filed not from the date that the appellee receives the appellant's brief. In the Court of Appeals, an appellee must file the original and 4 copies of the appellee's brief with the Appellate Court Clerk's Office. In the Court of Criminal Appeals, an appellant must file the original and 3 copies of the appellee's brief with the Appellate Court Clerk's Office. In addition, the appellee's initial brief must have a red cover.

23. **As the appellant, may you file a brief in response?**

Yes. The appellant may, but does not have to, file a reply brief to the appellee's brief. If you wish to file a reply brief, you must file it with the Appellate Court Clerk's Office no later than 14 days after the appellee files his or her brief with the Appellate Court Clerk's Office. In addition, the appellant's reply brief must have a gray cover.

2. **What happens if you do not file a reply brief as the appellant?**

The appellate court considers your case based upon the appellant's brief and the appellee's brief.

25. **Are you entitled to argue your case before the Court of Appeals or Court of Criminal Appeals?**

Yes, as a pro se litigant, you may appear in the appellate court to argue their cases. However, inmates incarcerated in correctional facilities may not appear to argue their cases in the appellate courts.

26. **When will oral argument for your case be set after the filing of the appellee's brief?**

There is no deadline for setting a case for oral argument established by rule or statute. As a practical matter, once the appellee's brief has been filed, the case is designated as ready for oral argument. Your case will be placed in line with other cases, and as soon as practicable, it will be set for oral argument. Certain cases, such as parental termination cases, are expedited for oral argument in front of other pending cases.

27. **How will you receive notice of the setting of my case for oral argument?**

The Appellate Court Clerk's Office will notify you as soon as your case has been set for oral argument. You are usually given several weeks' notice before the oral argument date. It is your responsibility to keep the clerk's office informed of any change of address, to ensure that you are notified of any changes regarding your case. Oral argument calendars for all appellate courts are posted on the web page of the Appellate Court Clerk's Office on the internet.

28. **May you as a pro se litigant present new exhibits or testify about your case during oral argument?**

No. The appellate court may not hear new testimony nor may it consider new exhibits. An appellate court may only consider evidence contained in the record along with legal arguments contained in the briefs and made at the time of oral argument. You may file a motion to supplement the record with pleadings previously filed in the trial court that were not included in the record sent to the appellate court.

However, the appellate court will not consider any documents not previously filed in the trial court. **You may not discuss any facts not contained in the record either in your brief or during oral argument.**

29. **Once the judges hear oral arguments, when will they decide your case, and how will you be notified of the decision?**

There is no deadline established by statute or rule for an appellate court to issue an opinion or order in an appeal. When an appellate court issues its opinion or order, the Appellate Court Clerk's Office will notify you by mail with a copy of the opinion, judgment and/or order of the appellate court. You may ask the Appellate Court Clerk's Office for a form for you to receive the opinion by e-mail.

30. **Can you appeal the decision of the Court of Appeals or Court of Criminal Appeals to the Supreme Court?**

Yes. You may file an Application for Permission to Appeal with the Supreme Court from a decision of the Court of Appeals or Court of Criminal Appeals.

31. **What is an Application for Permission to Appeal?**

An Application for Permission to Appeal is a request to the Supreme Court for it to agree to hear your appeal. When you appeal a decision of a trial court to the Court of Appeals or Court of Criminal Appeals, you do so as a matter of right by filing a Notice of Appeal. On the other hand, the Supreme Court has the discretion to accept or decline an Application for Permission to Appeal.

32. **How long after the decision of the Court of Appeals or Court of Criminal Appeals do you have to file an Application for Permission to Appeal?**

You have 60 days from the filing of the opinion and judgment of the Court of Appeals or Court of Criminal Appeals to file an Application for Permission to Appeal to the Supreme Court. Failure to file the application within 60 days may result in dismissal of the application. Also, the Supreme Court will not grant any requests for extension to file an Application for Permission to Appeal.

33. **How do you calculate the time for filing of documents with the Appellate Court Clerk's Office?**

In computing any period of time prescribed or allowed by these rules, you do not include the date of the filing from which you are counting in the number of days. For example, if the appellant's brief was filed on Monday, then you begin to count the 30 days for filing the appellee's brief on Tuesday. If your due date for filing your pleading falls on a Saturday, a Sunday, a legal holiday, or on a day on which weather or other conditions have made the office of the court clerk inaccessible, then your pleading is not due to be filed until the first business day after that date. For example, if your brief is due on Saturday, you may file it timely on the next business day which is Monday unless Monday is a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays are excluded from the counting of the number of days.

34. **What are the form requirements for briefs, motions and other pleadings filed in the appellate courts?**

The form requirements for all pleadings including briefs and motions in the appellate courts are: (1) opaque, unglazed 8 ½ x 11 inches white paper; (2) double-spaced text (may be single spaced for quoted matters of 50 words or more); (3) text no smaller than standard elite typewriting; (4) side margins no smaller than 2 inches combined and top and bottom margins no smaller than 1 ½ inches; (5) numbering of pages at the bottom of each page; and (6) pages fastened together on the left side.

35. **What is the proper way to cite to the record, transcript, exhibits, statutes and appellate court decisions?**

The following is a short listing of the generally accepted way to cite to various portions of the record and legal authorities:

1. Single Volume Record - (R., 25)
2. Multi-Volume Record - (IV R., 42)
3. Transcript - (Tr., 291)

4. Multi-Volume Transcript - (IX Tr., 149)
5. Exhibit - (Ex. 35)
6. Tennessee Code - Tenn. Code Ann. § 8-21-501
7. Tennessee Appellate Court Decision - *Smith v. Jones*, 15 S.W.3d 295 (Tenn. 2000)
8. Tennessee Rules of Appellate Procedure - Tenn. R. App. P. 13
9. Tennessee Constitution - Tenn. Const. Art. II, § 2

36. **Are the time deadlines for parental termination appeals the same as or different from regular appeals?**

_____Effective July 1, 2004 the rules have changed regarding deadlines in parental termination appeals. These changes were made to expedite these appeals, providing a balance between the parents rights and not having the child linger in the system for an unnecessarily long period of time.

The changes are as follows:

- a. The Notice of Appeal in addition to the other requirements shall indicate that “the appeal involves a termination of parental rights” case.
- b. The transcript is to be filed with the trial court clerk 45 days from the filing of the notice of appeal.
- c. Objections to the filing of the transcript must be made within 10 days after the service of the notice of the filing of the transcript.
- d. In addition to the documents that are excluded from the record as stated in Tenn. R. App. Pro. 24(a), any portion of the juvenile court file of a child dependency, delinquency or status offense case that has not been properly admitted into evidence at the termination of parental rights trial shall be excluded from the record.
- e. The trial court judge now has 20 days after the expiration of the period

for filing objections to the transcript to approve the transcript or the record is deemed to have been approved.

- f. The trial court clerk now has 5 days from the date the judge approves the record or the date of automatic approval in which to transmit the record to the court of appeals.
- g. While the appellant's brief is still due 30 days from the filing of the record with the appellate court clerk's office. The appellee's brief is now due 20 days from the filing of the appellants brief.

37. **Where is the Appellate Court Clerk's Office located?**

There are three Appellate Court Clerk's Offices located in Nashville, Knoxville and Jackson. You should file all motions, briefs and other documents in the city located in the grand division of the trial court from which you are appealing the final judgment. The addresses of these offices are as follows:

Nashville

Appellate Court Clerk's Office
Middle Division
Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407
Office: 615-741-1314
Fax: 615-532-8757

Knoxville

Appellate Court Clerk's Office
Eastern Division
Supreme Court Building
P.O. Box 444
Knoxville, TN 37901
Office: 865-594-6700
Fax: 865-594-6497

Shipping Address:
505 Main Street
Suite 200
Knoxville, TN 37902

Jackson

Appellate Court Clerk's Office

Western Division
Supreme Court Building
P.O. Box 909
Jackson, TN 38302-0909
Office: 731-423-5840
Fax: 731-423-6453

Shipping Address:
#6 Highway 45 By-Pass
Jackson, TN 38301

38. **How can I file motions, briefs or any other documents with the Appellate Court Clerk's Office?**

There are several ways to file motions, briefs or other documents with the Appellate Court Clerk's Office: (1) Hand-delivery to the Appellate Court Clerk's Office; (2) United States Postal Service; (3) Courier service such as Federal Express or United Parcel Service; and (4) Telefax in certain limited circumstances.

You may place filings in a drop box located at the entrance of each of the Supreme Court Buildings in the Knoxville, Nashville and Jackson locations. Filings placed in the box will be stamped filed the previous day. Example: If a filing is placed in the box at 8:00 p.m. on September 5th, it will be retrieved on September 6th at 8:00 a.m. but the filing will be stamped filed for September 5th.

39. **If you have any questions regarding your appeal, who may you contact?**

You may call Michael Catalano, the Clerk of the Appellate Courts at 615-741-1314.

40. **What are the business hours of the Appellate Court Clerk's Offices?**

The Appellate Court Clerk's Offices are open from 8:00 a.m. to 4:30 p.m. (local time) on Monday through Friday except for State Holidays which are as follows:

Holiday	Date
New Year's Day	January 1
Martin Luther King, Jr. Day	3 rd Monday in January
Presidents' Day	3 rd Monday in February
Good Friday	Friday before Easter
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1 st Monday in September
Columbus Day ¹	2 nd Monday in October
Thanksgiving Day	4 th Thursday in November
Christmas Day	December 25

¹By law, the Governor may substitute the Friday after Thanksgiving for Columbus Day.

Time-Line For An Appeal²

Person Filing	Item Filed	Time Deadline	Location Filed	TRAP Rule
Appellant	Notice of Appeal	30 days after entry of final order	Trial court clerk	4(a)
Appellant	Cost bond - Open with sufficient sureties, \$1000 cash or pauper's oath	30 days after entry of final order	Trial court clerk	6, 9 & 10
Trial Court Clerk	Copy of Notice of Appeal in Civil & Criminal cases	7 days after Notice of Appeal filed	Appellate Court Clerk	5
Appellant	Designation of record if less than full record is needed	15 days after Notice of Appeal	Trial court clerk	24(a)
Appellee	Designation of record if any, in addition to Appellant	15 days after service of Appellant's designation	Trial court clerk	24(b)
Appellant	Filing of certified transcript with proof of service to Appellee	60 days after filing Notice of Appeal	Trial court clerk	24(c)
Appellant	Statement of evidence when no transcript of evidence is available	60 days after filing Notice of Appeal	Trial court clerk	24(d)
Appellant	Notice that no transcript of the evidence or statement of the evidence to be filed	15 days after the Notice of Appeal	Trial court clerk	24(d)

²This is a general time line for most cases; however, the time line may be different for certain specific appeals. For example, the time-line for parental termination appeals is on an expedited basis and is controlled by Tenn. R. App. P. 8A.

Person Filing	Item Filed	Time Deadline	Location Filed	TRAP Rule
Trial Court Judge	Approval of the Transcript of the Evidence or the Statement of the Evidence	30 days after the 15 day objection period expires	Trial court clerk	24(f)
Trial Court Clerk	Appellate Record	45 days after the Transcript of the Evidence, Statement of the Evidence, or Notice of No Transcript filed	Transmit to Appellate Court Clerk	25(a) & (b)
Trial Court Clerk	Extension of time for completion of the record	45 day period - No more than 60 days after filing Transcript of the Evidence or Statement of the Evidence	Appellate Court Clerk	25(d)
Appellate Court Clerk	Notice of Filing of Record	Upon Receipt and Filing of Record	Trial court clerk and parties	26(a)
Appellant	Appellant's Brief	30 days after the filing of the record	All Parties	29(a)
Appellee	Appellee's Brief	30 days after the filing of Appellant's Brief	All Parties	29(a)
Appellant	Appellant's Reply Brief (Optional)	14 days after the filing of Appellee's Brief	All Parties	29(a)
Appellate Court Clerk	Notice of Oral Argument scheduled	Upon setting of the appeal for oral argument	All Parties	35(b)

Person Filing	Item Filed	Time Deadline	Location Filed	TRAP Rule
Appellate Court Clerk	Opinion of the Intermediate Appellate	Date the Opinion and Judgment Court and Judgment	All Parties	38 filed
Appellate Court Clerk	Application for Permission to Appeal (TRAP 11)	60 days after entry of judgment of the Int. App. Court	All Parties	11(b)
Appellate Court Clerk	Mandate (Certified copy of Opinion and Judgment)	61 days after entry of the judgment or immediately after denial of TRAP 11 Application by the Supreme Court	Trial Court Clerk & all Parties	42
Appellate Court Clerk	Response in Opposition to TRAP 11 Application	14 days after filing of TRAP 11 Application to the Supreme Court	All Parties	11(d)
Appellate Court Clerk	Order Granting TRAP 11 Application	Upon issuance by Supreme Court	All Parties	11(e)
Appellate Court Clerk	Appellant's Brief in the Supreme Court	At time of filing the TRAP 11 Application or 30 days after the Supreme Court grants the TRAP 11 Application	All Parties	11(f)
Appellate Court Clerk	Appellee's Brief in the Supreme Court	30 days after filing of Appellant's Brief	All Parties	11(f)
Appellate Court Clerk	Appellant's Reply Brief in the Supreme Court (Optional)	14 days after filing of Appellee's Brief	All Parties	11(f)
Appellate Court Clerk	Notice of Oral Argument scheduled	Upon setting of the appeal for oral argument	All Parties	35(b)

Person Filing	Item Filed	Time Deadline	Location Filed	TRAP Rule
Appellate Court Clerk	Opinion of the Supreme Court and Judgment	Date the Opinion and Judgment filed	All Parties	38
Appellate Court Clerk	Mandate (Certified copy of Opinion and Judgment)	11 days after entry of the judgment	Trial Court Clerk & all Parties	42

Color Chart for Briefs

Court of Civil Appeals

<u>Appellant's Brief</u>	<u>Appellee's Brief</u>	<u>Reply Brief</u>	<u>Amicus Brief</u>	<u>Motions w/ Affidavit</u>	<u>Petitions to Rehear</u>
Original + 4 copies (Blue cover)	Original + 4 copies (Red cover)	Original + 4 copies (Gray cover)	Original + 4 copies (Green cover)	Original + 1 copy (No cover)	Original + 3 copies (No cover)

Court of Criminal Appeals

Original + 3 copies (Blue cover)	Original + 3 copies (Red cover)	Original + 3 copies (Gray cover)	Original + 3 copies (Green cover)	Original + 3 copies (No cover)	Original + 3 copies (No cover)
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Supreme Court

<u>Rule 11</u> <u>(Application)</u>			<u>Application</u>	<u>Response</u>	
			Original + 6 copies (Blue cover preferred but Not required)	Original + 6 copies (Red cover preferred but not required)	
<u>Appellant's Brief</u>	<u>Appellee's Brief</u>	<u>Reply Brief</u>	<u>Amicus Brief</u>	<u>Motions w/ Affidavits</u>	<u>Petitions to Rehear</u>
Original + 5 copies (Blue cover)	Original + 5 copies (Red cover)	Original + 5 copies (Gray cover)	Original + 5 copies (Green cover)	Original + 1 copy (No cover)	Original + 5 copies (No cover)

Worker's Compensation Panel (Supreme Court)

Original + 3 copies (Blue cover)	Original + 3 copies (Red cover)	Original + 3 copies (Gray cover)	Review by Entire SCt Original + 5 copies
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Forms

and

Samples

IN THE _____ COURT FOR _____, TENNESSEE
[INSERT TRIAL COURT NAME] [INSERT COUNTY NAME]

NOTICE OF APPEAL

entered in this action on the _____ Day of _____, 20__.

Name [print]	Signature	BPR Nr
Address of Attorney or Pro Se Party:		

If not required, state reason: _____
[use additional sheet if necessary]

Attach Certificate of Service To Notice of Appeal - Tenn. R. App. P. 0001

Appellant(s)

[Party Initiating the Appeal]

Appellant: _____ **At trial:** * Plaintiff * Defendant

Address/Phone#: _____

Appellee(s)

Appellee: _____ **At trial:** * Plaintiff * Defendant

Attorney's Name: _____ BPR# _____

Address/Phone#: _____

**ATTACHMENT 2
APPEAL BOND FOR COSTS FORM**

APPEAL BOND FOR COSTS

I (we), _____, principal(s)/ Appellant(s), and
[Insert principal(s) or Appellant(s) name(s) here]
I (we), _____, the surety(ies)/ Attorney, bind myself/ourselves
[Insert surety(ies) or Attorney's name]
for the costs of appeal in:

_____,
[INSERT NAME OF PARTY]

vs.

Cause No. _____
[Insert case number]

_____,
[INSERT NAME OF PARTY]

_____, *or*
PRINCIPAL/APPELLANT [Signature]

_____ by _____
PRINCIPAL [Print] **ATTORNEY** [Signature]

PRINCIPAL'S ADDRESS: _____

[Insert address] (**street address only**; NO P.O. boxes; NO in care of principal's attorney)

_____ by _____
SURETY [Print] [Signature]

SURETY'S ADDRESS: _____

[Insert address] (**street address only**; NO P.O. boxes)

**IF THE PRINCIPAL(S) PAY ALL COSTS OF APPEAL, THEN THIS
OBLIGATION IS VOID. IF PRINCIPAL(S) FAIL(S) TO PAY, THEN
THE SURETY IS OBLIGATED TO PAY ALL COSTS OF APPEAL.**

***IF YOU DO NOT HAVE A SURETY TO SIGN YOUR BOND FOR COSTS ***: A cash
deposit of \$1,000.00 is deemed sufficient instead of a surety bond, except as otherwise required by the

trial court clerk and/or the Appellate Court Clerk.

A deposit of \$ _____ in cash has been made by _____ with _____
_____ of the _____ court clerk's office on the _____
day of _____, _____.

APPROVED: _____ or _____
CLERK OF THE TRIAL COURT CLERK OF THE APPELLATE COURT

ATTACHMENT 3A - BRIEF - COVER PAGE
IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

NISSAN NORTH AMERICA, INC.,)	
Successor by Merger to NISSAN MOTOR)	
MANUFACTURING COMPANY,)	
)	
Plaintiff/Appellee,)	
)	
v.)	Case No. M2003-00813-COA-R3-CV
)	
LINDA J. HAISLIP, Marshall County)	
Assessor of Property, et al.,)	
)	
)	
Defendants/Appellants.)	

*Rule 3 Appeal from the Final Judgment of the
Chancery Court for Davidson County, Case No. 02-1614-III*

BRIEF OF APPELLANT
STATE BOARD OF EQUALIZATION

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

MARY ELLEN KNACK (#14927)
Assistant Attorney General
Office of the Attorney General of Tennessee
P.O. Box 20207
Nashville, Tennessee 37202
(615) 741-7404

[Oral Argument Requested]

ATTACHMENT 3B - BRIEF - TABLE OF CONTENTS

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ATTACHMENT 3D - BRIEF - STATEMENT OF THE ISSUE(S)

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether the Chancery Court erred in holding that Nissan was not liable for ad valorem taxes on tangible personal property, *i.e.* special tools, that were owned by Nissan but that were in the possession of its contractors in Marshall and Lawrence counties based on the Chancery Court's ruling that the property was “leased” to the contractors.

ATTACHMENT 3E - STATEMENT OF THE CASE

STATEMENT OF THE CASE

In the underlying administrative proceedings, the State Board of Equalization was required to determine whether the Appellee, Nissan North America, Inc., was subject to ad valorem taxes on personal property that was owned by Nissan but that was located at the premises of its contractors in Marshall and Lawrence counties. (Administrative Record (A.R.) vol. I, p. 5). The property consisted of certain tools that were located at the premises of Kantus Corporation in Marshall County and Excel Industries in Lawrence County. (A.R. vol. I, 74-75). After the administrative judge assigned to the case issued an Initial Decision and Order ruling that Nissan was liable for payment of ad valorem taxes on the tools, Nissan appealed this determination to the Board's Assessment Appeals Commission. (A.R. vol. I, pp. 92-94, 105-11).

The Assessment Appeals Commission likewise ruled that Nissan was liable for the taxes. (A.R. vol. I, pp. 5-8). In reaching this decision, the Appeals Commission rejected Nissan's argument that Nissan should not be assessed for the tools because the tools were “leased” to its contractors within the meaning of Tenn. Code Ann. § 67-5-904. (A.R. vol. I, p. 6). The Commission’s decision became final on March 31, 2002, when the Board issued Official Certificates certifying ad valorem assessments for the disputed property. (A.R. vol. I, pp. 1-4).

ATTACHMENT 3F - BRIEF - STATEMENT OF THE FACTS

STATEMENT OF FACTS

In the administrative proceedings before the Board, the parties stipulated to the pertinent facts. (A.R. vol. I, pp. 73-84). Nissan owns a plant in Smyrna, Rutherford County, Tennessee, where it manufactures motor vehicles. (A.R. vol. I, p. 73). As part of its normal business operations, Nissan contracts with various suppliers, including Kantus Corporation and Excel Industries (the “Vendors”), to manufacture and supply parts that Nissan uses to manufacture its automobiles. (A.R. vol. I, pp. 73-74). Kantus operates a manufacturing facility in Marshall County, and Excel operates a facility in Lawrence County. (A.R. vol. I, p. 74). The tangible personal property at issue was located at these facilities. (A.R. vol. I, p. 75).

During the tax years in question, neither Nissan nor the Vendors reported as tangible personal property “special tools” that were owned by Nissan and located at the Vendors’ manufacturing facilities. (A.R. vol. I, p. 76). These “special tools” consisted of molds, patterns, dies, jigs, fixtures, and gauges that were used by the Vendors to manufacture parts for Nissan. (A.R. vol. I, pp. 74-75). In the typical arrangement between the parties, Nissan established specifications for the tools, which the Vendors designed and manufactured according to these specifications. (A.R. vol. I, pp. 74-75). Nissan then purchased the tools from the Vendors and remained the owner of the tools throughout their useful life. (A.R. vol. I, pp. 74-76).

ATTACHMENT 3G - BRIEF - ARGUMENT

ARGUMENT

NISSAN IS LIABLE FOR AD VALOREM TAXES ON THE SPECIAL TOOLS BECAUSE THE TOOLS WERE OWNED BY NISSAN, WERE USED OR HELD FOR USE IN NISSAN'S BUSINESS, AND WERE NOT LEASED TO THE VENDORS.

In Tennessee, the general rule is that all property is assessable against the owner of that property. *See* Tenn. Code Ann. § 67-5-502(a) (1998) (providing that “[t]he function of assessment shall be to assess . . . [a]ll property . . . to the person or persons owning or claiming to own the same”). To this end, the property tax statutes require business taxpayers, like Nissan, to annually report “all tangible personal property owned by the taxpayer and used or held for use in [the taxpayer’s] business or profession including, but not limited to, furniture, fixtures, machinery and equipment, all raw materials, [and] supplies.” Tenn. Code Ann. § 67-5-903(a) (1998).

An exception to the general rule arises in cases involving “leased” personal property. The property tax statutes provide that “leased personal property shall be classified according to the lessee’s use and assessed to the lessee.” Tenn. Code Ann. § 67-5-502(c) (1998); *see also* Tenn. Code Ann. § 67-5-901(b) (1998) (“[l]eased personal property in the possession of the lessee shall be classified and assessed according to the use of the lessee”). Thus, leased personal property is assessed to the lessee rather than to the property's owner.

In the present case, it was undisputed that Nissan was the owner of the special tools that form the subject of this dispute. (A.R. vol. I, pp. 75-76). It likewise was undisputed that these tools were used as directed by Nissan to manufacture parts used in Nissan’s production of motor vehicles. (A.R. vol. I, p. 73-76).

ATTACHMENT 3H - BRIEF - CONCLUSION

CONCLUSION

For these reasons, the State Board of Equalization requests this Court to reverse the Chancery Court's order ruling that Nissan was not assessable for the tools and to reinstate the Board's decision that Nissan is liable for ad valorem taxes on the tools.

Respectfully submitted,

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

MARY ELLEN KNACK (#14927)
Assistant Attorney General
Office of the Attorney General of Tennessee
P.O. Box 20207
Nashville, Tennessee 37202
(615) 741-7404

Counsel for State Board of Equalization

ATTACHMENT 3I - CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Brief of Appellant State Board of Equalization has been served upon counsel for Appellee by U.S. Mail, postage prepaid, addressed to:

Martha J. Trammell
NISSAN NORTH AMERICA, INC.
983 Nissan Drive
Smyrna, Tennessee 37167

Timothy J. Peaden
Mary T. Benton
ALSTON & BIRD, LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3424

on this the _____ day of July, 2003.

MARY ELLEN KNACK
Assistant Attorney General

ATTACHMENT 4 - MOTION FOR EXTENSION FOR FILING BRIEF
IN THE TENNESSEE COURT OF APPEALS
AT NASHVILLE

EASTMAN CHEMICAL CO,)	
)	
Appellee,)	
)	
v.)	No. M2002-02114-COA-R3-CV
)	
)	
RUTH E. JOHNSON,)	
COMMISSIONER OF REVENUE)	
OF THE STATE OF TENNESSEE.)	
)	
Appellant.)	

APPELLANT’S MOTION FOR EXTENSION OF TIME TO FILE REPLY BRIEF

Rule 21(b) of the Tennessee Rules of Appellate Procedure states that “[f]or good cause shown the appellate court may enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time. . . .”

The appellee filed its brief on January 31, 2003, and the appellant received the appellee’s brief on February 3, 2003. The appellant’s reply brief is presently due on February 18, 2003 which is the first business day after 15 days from the filing of appellee’s brief. Due to several days of inclement weather and the necessity of counsel for appellant to prepare for and present an argument in the Tennessee Supreme Court, an additional 7 days is necessary for counsel for appellant to prepare a reply brief. Accordingly, appellant moves for this Court for an extension of time to and through February 25, 2003 within which to file a reply brief.

Counsel for the appellee has stated to counsel for the appellant that he has no objection to the extension.

Respectfully submitted,

PAUL G. SUMMERS
Attorney General & Reporter

MICHAEL W. CATALANO
Associate Solicitor General
425 5th Avenue North
Nashville, Tn 37243
(615) 741-3499
B.P.R. 6486

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document has been forwarded by First-Class U.S. Mail, postage prepaid on February ____, 2003 to counsel for the appellants:

Charles A. Trost
Michael G. Stewart
Brett R. Carter
Waller, Lansden, Dortch & Davis
511 Union Street
Nashville, Tennessee 37219

MICHAEL W. CATALANO
Associate Solicitor General

GLOSSARY

Affidavit - A written statement of the facts, made voluntarily, and sworn to as the truth before someone who has the authority to give oaths.

Appeal - A request to a higher court to review the decision of a lower court.

Appeal Bond - Cash or other security required by the Appellate Court to ensure payment of the costs of the appeal.

Appellant - The person who appeals the decision from a lower court to a higher court. This can be either the plaintiff or the defendant in the lower court.

Appellate Court - A higher court that has the jurisdiction (the power) to review the judicial actions of a lower court.

Appellate Rules - Rules governing the proper procedures that need to be followed when appealing a lower courts decision.

Appellee - The party from the lower court that did not appeal the lower court's decision.

Application for permission to appeal - A request to the Supreme Court to review the decision of the Court of Appeals.

Arrest warrant - A written order of the court which orders law enforcement officers to arrest a person and bring him before the court.

Brief - A written document, this is a summary (short) statement of the facts of the case, the laws that were involved, and an argument of how those laws apply to the facts supporting your side.

Certificate of Service - A written statement assuring the court that the other side was sent a copy of what you filed with the court.

Deposition - Where one party (through his or her attorney) asks oral questions of the other party or of a witness for the other party. The deposition is done under oath outside of the courtroom. A transcript (a word for word account) is made of the deposition.

Discovery - Getting facts and other information from the other party about the case that is necessary in order to prepare your case.

Final decision/ judgment/order - There is nothing left to dispute. Argument is ended between the parties, leaving nothing to be done but to enforce the decision of the court.

Indictment - A formal written charge issued by a grand jury against a party charged with a crime.

Indigent - A person who is without funds or the ability to hire a lawyer to defend him. Someone who is determined to be indigent by the court has the right to a court appointed attorney.

In forma pauperis - Permission given by court for a poor person to proceed without having to pay the court costs or fees.

Interrogatories - A set of written questions asked of a party, witness, or other person who has information important to the case. The person answering the questions signs a sworn statement that their answers are true.

litigant - A party to a lawsuit, often called the plaintiff or the defendant.

Notice of Appeal - A document that gives notice of a party's intention to appeal the trial court's decision. It is filed with the trial court clerk's office and a copy is served on the other side.

Party - Is a person whose is designated in the record as either the Plaintiff or the defendant. That "party" may be a single individual; more than one person; or an entity (ex: business).

Pro se - A person who does not have an attorney representing them and appears in court representing him or herself.

Record - An official collection of the documents and exhibits filed with the court that were used in a case to support one side or the other and the written accounts (transcripts) of any court proceedings.

Relief - The assistance that is sought from the court.

Subpoena - Is a command from the court at appear at a certain time and place to give testimony regarding a certain matter.

Summons - A document at the beginning of a civil action. Informing a defendant that an action has begun against them, and that they are required to file an answer to the claims against them.

Surety - One who agrees to pay the court costs of an appeal in the event the party appealing fails to pay them.

Verdict - The official decision made by a jury, as to which side wins.